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THOMPSON COBURN, LLP  
ONE US BANK PLAZA  
SUITE 3500  
ST LOUIS, MO 63101

EXAMINER
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CARTAGENA, MELVIN A

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/620,043  
Filing Date: July 15, 2003  
Appellant(s): FOSTER ET AL.

**MAILED**  
**FEB 16 2007**  
**Group 3700**

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Joseph M. Rolnicki  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed March 13, 2006 appealing from the Office action mailed October 11, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct. There is a typographical error in the statement of grounds of rejection, the US 4,138,039 reference has incorrectly been indicated as US 1,138,039.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

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### **(9) Grounds of Rejection**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following ground(s) of rejection are applicable to the appealed claims:

Claims 26, 33-36 and 39-49 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 4,138,039 to Micallef.

Micallef shows a manually operated liquid dispenser as seen in Figs. 3 and 5, having a pump chamber 18 having an interior volume and cylindrical walls 22 along a center axis, a cylindrical dispenser housing 32 with a top wall 50 and side walls surrounding the entire pump chamber and spaced inward and separated from the pump chamber, see Figs. 2 and 3, a pump plunger 16 having a discharge passage 20 through the center tube 42, a resilient bulb 24, tubular input valve 24 and output valve 28, a vent opening 31 and vent valve to replace the dispensed content of the reservoir with air, see Figs. 3 and 5, the vent valve formed by bead on the top of the resilient bulb seating around the opening 40.

### **(10) Response to Argument**

Appellant argues that Micallef does not have an interior volume surrounded by a cylindrical wall, a top wall with a pair of sidewalls surrounding and spaced from a center dispensing tube and a flexible resilient bulb.

As stated in the rejection above, Micallef shows a cylindrical wall 22 defining an interior volume space 18, a resilient bulb 24 connected to the cylindrical wall 22 to define the interior

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volume of a pump chamber, the cylindrical wall 22 is coaxial with the discharge passage 20, see Fig. 5.

Micallef also shows, in Fig. 2, at least a pair of vertical parallel walls on the top of a cylindrical housing wall 32 that surrounds the entire pump chamber and the resilient bulb 24 having a tubular and integrally formed bead on top to form an input vent valve that allows air to flow between the opening 40 and the center tube 42 when the pump is actuated. In addition the pump chamber formed by the resilient bulb and the cylindrical wall 22 has an integrally formed input port where the input ball valve 26 seats and seals the volume of the pump chamber.

Appellant's arguments that Micallef does not have an interior volume surrounded by a cylindrical wall, a top wall with a pair of sidewalls surrounding and spaced from a center dispensing tube and a flexible resilient bulb have been fully considered; However, for the reasons stated above, the examiner disagrees with the appellant's arguments.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

MAC *MAC*

Conferees:

Kevin Shaver



Eric Keasel

